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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/488,107	01/20/2000	Warren E. Friss	23616.01	3969

7590 01/08/2009
R Lewis Gable
Cowan Liebowitz & Latman PC
1133 Avenue of the Americas
New York, NY 10036-6799

EXAMINER

PATEL, JAGDISH

ART UNIT	PAPER NUMBER
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3693

MAIL DATE	DELIVERY MODE
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01/08/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: WARREN FRISS AND STEVEN KATZ

Application No. 09/488,107
Technology Center 3600

Mailed: January 8, 2009

Before TOI JOHNSON *Review Paralegal*
JOHNSON, *Review Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on June 3, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER, GROUNDS OF REJECTION

A review of the file indicates that the Examiner's Answer filed December 10, 2007 does not comply with the guidelines provided in MPEP § 1207.02 because it refers, either directly or indirectly, to a prior Office action without fully restating the point relied upon in the answer. If there is a complete and thorough development of the issues in a prior action, the examiner may copy any referenced prior rejection(s) from the prior Office action into the examiner's answer. The examiner is reminded to reevaluate his or her prior position in light of the arguments presented in the brief, and should expressly withdraw any rejections not adhered to in the "Grounds of Rejection Withdrawn" section of the examiner's answer.

Therefore, a substitute examiner's answer which fully restates any prior points relied upon in the answer, is required. *See also Manual of Patent Examining Procedure* (MPEP) § 1207.02 (8th ed. Rev. 6, Sept 2007) for details.

ORAL HEARING

A review of the Image File Wrapper (IFW) indicates that Appellants filed an Oral Hearing request within the body (page 1) of the Appeal Brief filed September 5, 2006. The Oral Hearing request does not comply with the rules set forth under 37 CFR 41.47(b) which state in part:

(b) If appellant desires an oral hearing, appellant must file, as a separate paper captioned "REQUEST FOR ORAL HEARING," a written request for such hearing accompanied by the fee set forth in § 41.20(b)(3) within two months from the date of the examiner's answer or supplemental examiner's answer.

Appropriate action is required.

CONCLUSION

Accordingly, it is ORDERED that the application be returned to the Examiner:

ORDERED that the application is returned to the Examiner to:

- 1) vacate the Examiner's Answer mailed December 10, 2007;
 - 2) generate a new Examiner's Answer which does not refer directly or indirectly to a prior Office action without fully restating the point relied on in the answer;
 - 3) notify Appellant to submit an Oral Hearing under 37 CFR 41.47(b);
- and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

Application No. 09/488,107

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